

SCHOOL CONSTRUCTION COALITION



Coalition Members

Connecticut Conference
of Municipalities

Connecticut Council of
Small Towns

Connecticut
Association of Public
School Superintendents

Connecticut
Association of Boards
of Education

American Council of
Engineering Companies
of Connecticut

Connecticut
Association of School
Business Officials

Construction Mgmt.
Association of America
Southern NE Chapter

Connecticut Chapter of
The American Society
of Landscape Architects

American
Institute of Architects,
Connecticut Chapter

Connecticut
QBS Council

Connecticut Society of
Civil Engineers

Public Purchasing
Association
of Connecticut

Associated General
Contractors
of Connecticut

Connecticut
Association of
Municipal Attorneys

AMENDMENT TO C.G.S. § 10-287(b) THE SCHOOL CONSTRUCTION BIDDING STATUTE

In May 2007, Governor Jodi Rell signed into law PA 07-249, state legislation relating to the State funding of school construction projects. The following was included:

Section 25 Subsection (b) of section 10-287 of the general statutes is repealed and the following is substituted in lieu thereof (effective 7/1/07):

(b) All orders and contracts for school building construction receiving state assistance under this chapter, including orders and contracts for architectural or construction management services shall be awarded to the lowest responsible qualified bidder only after a public invitation to bid, which shall be advertised in a newspaper having circulation in the town in which construction is to take place. . .

Concerned with the application of this statutory amendment and the potential unintended negative consequences to school building projects in Connecticut, a group, consisting of municipal and school organizations and professional services and trade organizations, has formed the School Construction Coalition ("SCC").

For several reasons, some of which we list below, the SCC believes that selecting professional services for school construction projects using competitive bids is harmful to the communities seeking the best quality and value in the construction of lasting school buildings. We are proposing an amendment to the statute that allows for a qualification based selection process for professional services for construction projects, ("QBS"), similar to the selection process used by the Connecticut Department of Public Works as well as many other governmental and private owners. QBS is generally defined as:

A Qualification Based Selection process that relies on a thorough examination of a consultant's qualifications, credentials, experience, and demonstrated competence to provide the service required, and to do so at a fair and reasonable price.

Unintended Consequences of C.G.S §10-287 (b)

- **The difficulty and impracticality of competitively bidding professional services before full development of programs and selection and analyses of sites** - Architects, engineers and construction managers are essential to help the Owner to develop an undefined concept, then further refine it for suitability, budget, constructability and bidding / construction. With the new requirements for "green" buildings and achieving Silver LEED standards, it is impossible for design professionals to submit the lowest bid and include the multitude of options, alternatives and technologies that have to be "tested" during the design phase to determine the potential savings.
- **The impermanent and volunteer nature of school building committees** - Most Connecticut municipalities and towns do not have experienced school building committees or in-house staff who know what will be required of the architect or construction manager for each project before the bid package is written. Unlike "packages" subsequently specified and bid upon by contractors, professional services are defined or given scope through consultation between owner and professional service providers. In most communities, there is no professional in-house staff to help prepare technical specifications needed to solicit bids.
- **Need for Additional Feasibility Study** - As a result of C.G.S §10-287 (b), Owners may have to competitively bid and hire an architect or other consultants to perform a feasibility study, define program, site issues and budget, adding to the project cost for fees, and extending the project timeline, thus increasing the project cost of construction. Further, fees spent on a feasibility study are not eligible for State reimbursement.
- **Potential Negative Financial Impact of Lowest Bid Selection Process** - A low bidder requirement will prompt consultants to be as competitive as possible given the municipality's assumption of an appropriate scope of services, not one based on empirical testing, programming, etc. The low bidder will bid on a series of "assumptions" and often include many "exclusions" in the bid in order to maintain competitiveness. The more assumptions and exclusions in a bid, the more opportunity for increased project costs and change orders. While a professional may not have the lowest fee, the delta in fees may easily be diminished by good investigative research, testing, design and construction advice that incorporates value-added elements, which will ultimately reduce the potential for change orders and reduce operating and/or maintenance costs throughout the life-cycle of the facility.
- **The Legislation Hampers Municipal Choice** - The municipality no longer has the option of working with firms that have successfully worked and saved money for the town in the past. The new process conflicts with many towns' preexisting successful RFP procurement procedures. Nowhere in a low bid process does owner consultant chemistry and previous related project knowledge and experience come in to play.
- **Lack of Guidelines for Implementing the Law** - The statute's disallowance of the QBS processes that are already successfully used by many school districts has stalled or stopped a number of school projects that were in various stages of development. The low bid process itself is fraught: litigation has already begun in Trumbull involving a bid dispute by an unsuccessful architectural firm.
- **Conflicting Interpretations** - The statute and Commissioner of Education circular letter C-6 dated October 1, 2007 appear to be in conflict since the Commissioner's letter indicates that an RFQ/RFP/QBS selection process can be used as long as a fee schedule is "included in that review and selection process." This interpretation does not seem to be consistent with Connecticut court decisions interpreting "lowest responsible qualified bidder."

- **Lack of Provision for an Assessment Mechanism** - The Act does not provide a mechanism for the Bureau of School Facilities ("BSF") to vet and approve the Owner's process and/or selection, which appears to put the Owner at-risk for full reimbursement of professional service fees if BSF does not agree with the process and/or selection after-the-fact.
- **Additional Expenses to be Incurred** -Legal Fees: At the recent informational presentation the Chief of the BSF stated that the Owner's counsel is required to file an affidavit that the building committee had a legitimate selection process. This leads to the expense of requiring a Town attorney to attend all relevant building committee meetings in order to properly document and attest to the validity and fairness of the committee's selection.

Cost of Change Orders: the statute would also require competitive bids for change orders to professional service contracts. It would seem to be impossible, if not illegal, to try to split the legal responsibility under the architectural licensing laws for the school's design among two or more architectural / engineering firms.

For these reasons and others, we are proposing the following revised 10-287b:

***AN ACT CONCERNING AUTHORIZATION OF STATE GRANT COMMITMENTS
FOR SCHOOL BUILDING PROJECTS AND CHANGES TO THE STATUTES
CONCERNING SCHOOL BUILDING PROJECTS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Subsection (b) of section 10-287 of the general statutes is repealed and the following is substituted in lieu thereof:

(b) All orders and contracts for school building construction receiving state assistance under this chapter, including orders and contracts for architectural or construction management services, shall be awarded to the lowest responsible qualified bidder only after a public invitation to bid, which shall be advertised in a newspaper having circulation in the town in which construction is to take place, except for (1) school building projects for which the town or regional school district is using a state contract pursuant to subsection (d) of section 10-292, (2) change orders, those contracts or orders costing less than ten thousand dollars and those of an emergency nature, as determined by the Commissioner of Education, in which cases the contractor or vendor may be selected by negotiation, provided no local fiscal regulations, ordinances or charter provisions conflict, and (3) orders and contracts for architectural or construction management services where the awarding authority uses a qualification-based selection process, substantially equivalent to the procedure defined in C.G.S. § 4b-51 et seq.

